FINRA

Financial Industry Regulatory Authority

HARD COPY

Gary J. Dernelle
Associate General Counsel

Direct: (202) 728-8255
Fax: (202) 728-8264

December 24, 2015

VIA MESSENGER

Brent J. Fields
Secretary
Securities and Exchange Commission
100 F Street, N.E.
Washington, DC 20549-1090

RE: In the Matter of the Application of Stephen Grivas
Administrative Proceeding No. 3-16756

Dear Mr. Fields:

Enclosed please find the original and three (3) copies of FINRA's Brief in Opposition to Application for Review in the above-captioned matter.

Please contact me at (202)728-8255 if you have any questions.

Very truly yours,

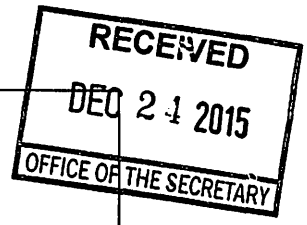
Gary J. Dernelle

Enclosure

cc: Martin P. Unger
Wexler Burkhart Hirschberg & Unger, LLP
377 Oak Street
Concourse Level – C2
Garden City, New York 11530

HARD COPY

BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.



In the Matter of the Application of

Stephen Grivas

For Review of

FINRA Disciplinary Action

File No. 3-16756

FINRA'S BRIEF IN OPPOSITION TO STEPHEN GRIVAS'S APPLICATION FOR REVIEW

Alan Lawhead
Vice President and
Director – Appellate Group

Jennifer Brooks
Associate General Counsel

Gary Dernelle
Associate General Counsel

FINRA
Office of General Counsel
1735 K Street, NW
Washington, DC 20006
(202) 728-8255

December 24, 2015

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. BACKGROUND 3

III. FACTS 5

A. The Fund and Its Manager 5

B. The Fund Sells Its Securities to Investors 6

C. The Fund Buys Facebook Stock and Pays Its Fees and Expenses 7

D. Grivas Cures Obsidian Financial's Net Capital Problems with Fund Monies 9

E. Grivas Does Not Disclose or Document the $280,000 Withdrawal 9

F. Grivas Repays the Fund After FINRA Investigates His Conduct 11

IV. ARGUMENT 12

A. Grivas Converted Monies and Violated the High Standards of Conduct Required Under FINRA Rule 2010 12

B. FINRA Had Authority to Discipline Grivas 14

C. Grivas Had Fair Notice of FINRA's Claims 20

D. Barring Grivas Is Remedial and Serves the Public Interest 22

V. CONCLUSION 26

TABLE OF AUTHORITIES

Federal Court Decision **Pages**

Daniel Joseph Alderman, 104 F.3d 285 (9th Cir. 1997) 18

Austin Mun. Sec., Inc., v. NASD, 757 F.2d 676 (5th Cir. 1985) 15

Fiero v. FINRA, Inc., 660 F.3d 569 (2d Cir. 2011) 15

Fleet Boston Robertson Stephens, Inc., v. Innovex, Inc., 264 F.3d 770 (8th Cir. 2001) 15

Heath v. SEC, 586 F.3d 122 (2d Cir. 2009) 15

Lehl v. SEC, 90 F.3d 1483 (10th Cir. 1996) 21

McCarthy v. SEC, 406 F.3d 179 (2d Cir. 2005) 26

Raymond James Fin. Servs., Inc., v. Cary, 709 F.3d 382 (4th Cir. 2013) 15

UBS Fin. Servs., Inc., v. Carilion Clinic, Inc., 706 F.3d 319 (4th Cir. 2013) 15

Vail v. SEC, 101 F.3d 37 (5th Cir. 1996) 16, 19

SEC Decisions

Timothy L. Burkes, 51 S.E.C. 356 (1993) 22

Ernest A. Cipriani, 51 S.E.C. 1004 (1994) 14, 17

DWS Sec. Corp., 51 S.E.C. 814 (1993) 19

Harry Friedman, Exchange Act Release No. 64486, 2011 SEC LEXIS 1699 (May 13, 2011) 4

James A. Goetz, 53 S.E.C. 472 (1998) 20

Leonard John Ialeggio, 52 S.E.C. 1085 (1996) 16, 20

Thomas E. Jackson, 45 S.E.C. 772 (1972) 17, 23

Ko Sec., Inc., 56 S.E.C. 1126 (2003) 16

Mike K. Lulla, 51 S.E.C. 1036 (1994) 14, 17, 18, 23

Daniel D. Manoff, 55 S.E.C. 1155 (2002) 14, 17, 20, 22, 24, 25, 26

Mission Sec. Corp., Exchange Act Release No. 63453,
2010 SEC LEXIS 4053 (Dec. 7, 2010) 20

MPhase Techs., Inc., Exchange Act Release No. 74187,
2015 SEC LEXIS 398 (Feb. 2, 2015) 16

John Edward Mullins, Exchange Act Release No. 66373,
2012 SEC LEXIS 464 (Feb. 10, 2012) 14, 19, 22, 23, 25

Denise M. Olsen, Exchange Act Release No. 75838,
2015 SEC LEXIS 3629 (Sept. 3 2015) 12, 24, 25

William F. Rembert, 51 S.E.C. 825 (1993) 22

Alfred P. Reeves, Exchange Act Release No. 76376,
2015 SEC LEXIS 4568 (Nov. 5, 2015) 15, 16, 25

John M.E. Saad, Exchange Act Release No. 62178,
2010 SEC LEXIS 1761 (May 26, 2010) 21, 22

Stuart-James Co., Inc., 48 S.E.C. 779 (1987) 16

Henry E. Vail, 52 S.E.C. 339 (1995) 23

Benjamin Werner, 44 S.E.C. 622 (1971) 15, 22

Blair Alexander West, Exchange Act Release No 74030,
2015 SEC LEXIS 102 (Jan. 9, 2015) 17, 19, 22, 23, 24

Keilen Dimone Wiley, Exchange Act Release No. 76558,
2015 SEC LEXIS 4952 (Dec. 4, 2015) 12, 13, 16, 19, 23, 25, 26

FINRA Decisions

Dep't of Enforcement v. Mullins, Complaint Nos. 20070094345, 20070111775,
2011 FINRA Discip. LEXIS 61 (FINRA NAC Feb. 24, 2011) 22

Federal Statutes and Codes

15 U.S.C. §78o-3(b)(6) 14

15 U.S.C. §78s 14

15 U.S.C. §78s(e) 12

17 C.F.R. §201.420(e) 5

FINRA Rules and Guidelines

FINRA Rule 2010 ..... passim

FINRA Rule 9265(b) 5

FINRA Rule 9341(f)(2) 5

FINRA Rule 9349 (c) 5

FINRA Sanction Guidelines (2013) 23, 24, 25

BEFORE THE
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C.

In the Matter of the Application of

Stephen Grivas

For Review of

FINRA Disciplinary Action

File No. 3-16756

FINRA'S BRIEF IN OPPOSITION TO STEPHEN GRIVAS'S APPLICATION FOR REVIEW

I. INTRODUCTION

In June 2012, when confronted with a clear conflict of interest, Stephen Grivas ("Grivas") chose deception and self-dealing over honesty and fair dealing. Obsidian Financial Group, LLC ("Obsidian Financial"), a FINRA-member broker-dealer that Grivas owned indirectly, was struggling financially and in need of additional regulatory capital to continue operations. Grivas found an unsuspecting source for the required capital in the Obsidian Social Networking Fund I, LLC (the "Fund"), a pooled investment vehicle for which he served as the de facto manager. Foregoing his fiduciary obligations to the Fund and its investors, Grivas made an unauthorized withdrawal of $280,000 from the Fund's operating bank account and, in a series of surreptitious transactions made over two days, transferred this sum to Obsidian Financial for the express purpose of curing the firm's regulatory capital deficiency. He told no one of his actions, and he did not return the missing monies to the Fund until FINRA filed a complaint against him alleging that he converted the $280,000.

On August 14, 2015, Grivas filed an application seeking the Commission's review of FINRA's action in this matter. Specifically, Grivas appeals a July 16, 2015 decision of FINRA's National Adjudicatory Council ("NAC") that found the foregoing conduct violated FINRA Rule 2010. The decision barred Grivas from the securities industry for his patently unethical behavior.

The NAC's decision is without any genuine controversy. The facts on which the NAC's decision is premised are not in dispute, and they provide a firm foundation for FINRA's action in this matter. Grivas's blatant self-dealing and conversion of Fund assets dishonored the fundamental ethics by which all FINRA members and their associated persons must abide. Grivas has proven himself incapable of fulfilling his regulatory duties as a securities industry professional and unfit for the privilege of handling other people's money. Given the gravity of his wrongdoing, a bar, which is the standard sanction for conversion under the FINRA Sanction Guidelines ("Guidelines") and is consistent with Commission precedent, serves an appropriately remedial purpose that protects the investing public and other participants in the securities markets.

In the November 20, 2015 brief Grivas filed in support of his review application, he fails to confront FINRA's action on its merits.[1] He does not dispute that he intentionally withdrew monies from a Fund bank account for the unauthorized purpose of keeping Obsidian Financial in business. He does not claim that the bar imposed by FINRA's action does not serve a remedial purpose. He instead simply creates debates where none exist. For example, Grivas claims that FINRA lacked jurisdiction to impose a sanction for his manifestly dishonorable conduct. This

[1] References in this brief to "Br. at ___" are to corresponding pages of the brief Grivas filed in support of his application for review on November 20, 2015.

assertion is baseless. FINRA's authority to discipline its members and their associated persons for any unethical, business-related misconduct, like the wrongdoing that FINRA discovered here, is well-settled and supported by long-standing precedent. Grivas further asserts that he was found liable for misconduct that was not charged in FINRA's complaint. This argument is equally deficient. The bases for FINRA's action were clear to him, and Grivas, who has been represented by counsel at all stages of these proceedings, had full opportunity to defend himself fairly.

The Commission should accordingly affirm FINRA's action and the sanction it imposed. Grivas's willingness to acquire a sum of money by cheating the Fund and its investors for a self-interested aim indicates a troubling disregard for basic principles of ethics and honesty. Absent compelling evidence of mitigation that does not exist in this case, barring Grivas serves to reinforce the just and equitable principles of trade that are at the heart of FINRA's mission.

II. BACKGROUND

FINRA's action stems from an April 30, 2013 disciplinary complaint. RP 1-17.[2] FINRA staff claimed that Grivas converted $280,000 of investor monies raised through the Fund and used this sum to meet the regulatory capital requirements of Obsidian Financial, in violation of FINRA Rule 2010.[3] RP8. Grivas denied the alleged misconduct. RP 39-45.

---

[2] References in this brief to "RP at ___" are to corresponding pages of the certified record filed by FINRA.

[3] Enforcement alleged in the alternative that Grivas misused the funds, also in violation of FINRA Rule 2010. RP at 9-13.

A Hearing Panel later conducted disciplinary proceedings, including a hearing, during which Grivas largely admitted the operative facts on which FINRA staff based its action.[4] RP 879-83, 1073-1742, 2410. The Hearing Panel found that Grivas violated FINRA rules as alleged in the complaint and barred him for his misconduct. RP 2409-32. Grivas appealed the Hearing Panel's decision to the NAC. RP 2435-41.

On July 16, 2015, the NAC issued its decision affirming the Hearing Panel's findings and the sanction it imposed.[5] RP 2897-2916. The NAC found that Grivas had fair notice of FINRA's allegations. RP 2902 n.3. The NAC found also that Grivas violated the high standards of commercial honor and just and equitable principles of trade by which all securities industry participants must abide when he converted the Fund's monies, in violation of FINRA Rule 2010. RP 2907-08. In reaching this conclusion, the NAC agreed with the Hearing Panel that Grivas's testimony lacked credibility and rejected his claims that the monies he took from the fund represented an authorized advance or loan. RP 2908-10. After considering fully and rejecting Grivas's assertion that FINRA lacked authority to discipline him for his business-related misconduct, the NAC concluded that his flagrant dishonesty posed too great a risk to the investing public to allow him to continue with his employment in the securities and barred him. RP 2910-13.

---

[4] Prior to the hearing, Grivas stipulated to the core of the facts alleged in FINRA's complaint. RP 879-83.

[5] Although Grivas contends that the NAC's decision errs by including findings that were not contained in the Hearing Panel's decision, Br. at 3, this argument is meritless. The NAC reviews Hearing Panel decisions de novo and has broad discretion under FINRA's rules to review and modify any Hearing Panel finding and sanctions and make its own independent findings. *See Harry Friedman*, Exchange Act Release No. 64486, 2011 SEC LEXIS 1699, at *25 & n.22 (May 13, 2011).

This timely appeal followed.[6] RP 2917-2935. The NAC's decision constitutes the final disciplinary action of FINRA for purposes of Commission review of this matter. *See* FINRA Rule 9349(c).

III. FACTS

A. The Fund and Its Manager

Grivas associated with Obsidian Financial from April 14, 2008, to October 16, 2013, a period during which he registered through the firm as a general securities representative and corporate securities representative.[7] RP 879, 1127, 1744. He owned Obsidian Financial indirectly as a 25 percent shareholder and managing member of its parent, Obsidian Capital Holdings, LLC ("Obsidian Holdings").[8] RP 879-80, 1864, 2026.

Grivas formed the Fund in May 2011 as a special purpose vehicle to pool investor monies for the purpose of purchasing, through private securities transactions, restricted shares of Facebook, Inc. ("Facebook") stock prior to Facebook's anticipated initial public offering ("IPO"). RP 880, 1131, 1356, 1371, 1829, 1840, 1846, 1858, 2137. Also in May 2011, Grivas formed Obsidian Social Networking Management, LLC ("Obsidian Management"), to act as the

---

[6] Grivas contends that he made numerous efforts to obtain portions of the record from this matter from FINRA. Br. at 1 n.1. FINRA complied fully with its obligations under the Commission's Rules of Practice when it filed one copy of the certified record and three copies of the index to the record with the Commission and served one copy of the index also on Grivas. *See* Commission Rule of Practice 420(e); 17 C.F.R. § 201.420(e). If Grivas desired copies of the hearing transcript or the transcript of oral arguments before the NAC, he was free to purchase such transcripts from the court reporter. *See* FINRA Rule 9265(b); 9341(f)(2).

[7] Grivas entered the securities industry in 1992. RP 1758. He is not currently associated with a FINRA member.

[8] Grivas disclosed Obsidian Holdings as an outside business activity to his broker-dealer. RP 879.

Fund's manager. RP 880, 1840, 1846, 1863, 1888, 2137. Obsidian Management was an acknowledged Fund fiduciary under the terms of the Fund's operating agreement. RP 1869, 1890. Grivas controlled all of the operations and activities of the Fund as the sole owner and manager of Obsidian Management and hence acted as the Fund's de facto manager.[9] RP 880, 1368-69, 1840, 1846, 1863-64.

B. The Fund Sells Its Securities to Investors

The Fund offered Class A interests to investors as securities exempt from registration under Section 4(2) of the Securities Act of 1933 and Regulation D thereunder.[10] RP 1829-36, 1840, 1866, 2137. Sales of Class A interests commenced in September 2011 and continued until the Fund closed the offering to additional investors in March 2012. RP 880, 1935, 2236. In total, the Fund sold $11,202,305 in Class A interests to 54 investors. RP 880. Class A interests were initially offered and sold to investors through Obsidian Financial and later through two additional broker-dealers—Craig Scott Capital, LLC, and Brookstone Securities, Inc. RP 880, 1366-67, 1966, 1848. Twenty four of the Fund's investors purchased their interests as customers of Obsidian Financial. RP 880, 1966, 1976.

---

[9] Grivas disclosed to his broker-dealer also that the Fund and Obsidian Management were outside business activities. RP 880.

[10] The Fund had both Class A and Class B membership interests. RP 1363-64, 1840, 1846. Grivas indirectly owned 99 percent of the Fund's Class B interests as the sole member of Obsidian Social Networking Capital, LLC. RP 1840, 1846, 1864, 1882, 1910. Stacy Marcus ("Marcus"), a consultant who Grivas hired to find Facebook stock available for the Fund to purchase and to assist with the Fund's operations, indirectly owned the remaining one percent of the Fund's Class B interests as the sole member of Social Strategy, LLC ("Social Strategy"). RP 882, 1131-32, 1358-60, 1363-64, 1840, 1846, 1863-64, 1882, 1888, 1910.

C. The Fund Buys Facebook Stock and Pays Its Fees and Expenses

The Fund maintained two bank accounts—an escrow account and an operating account for which Grivas possessed sole access and signing authority. RP 880, 1138-41, 1368-69, 2207-28, 2229-78. Investments by the Fund's Class A members were received first in the Fund's escrow account and later transferred to the Fund's operating account to purchase Facebook stock and pay the Fund's fees and expenses.[11] RP 880, 1378-79, 1970-71, 2208, 2229-57.

In two transactions, on April 4, 2012, and April 17, 2012, respectively, the Fund purchased 260,000 Facebook shares for $9,976,750. RP 881, 1374, 1975, 2208. After completing the purchases, the Fund's operating account contained un-invested funds totaling totaling $1,225,500.[12] RP 881, 2207.

The Fund's private placement memorandum and operating agreement stated that the Fund would pay Obsidian Management a management fee equal to the greater of $50,000 or two percent of the gross proceeds raised from the sale of the Fund's Class A interests. RP 1365-66, 1841, 1847-48, 1861, 1883, 1892. The management fee was due to Obsidian Management after the Fund's first purchase of Facebook securities.[13] RP 1366, 1841, 1847-48, 1861.

On May 9, 2012, Grivas paid Obsidian Management a $224,046 management fee and wired this sum from the Fund's operating account to Obsidian Management's bank account. RP

---

[11] Additional funds received from potential investors into the Fund's escrow account were returned when the Fund closed its offering of Class A interests. RP 880.

[12] Due to a limited availability of Facebook shares in the private market, the Fund was unable to invest all of the monies it raised from the sale of Class A interests. RP 1384-85.

[13] Although it was possible for Obsidian Management to earn a second year's management fee, the Fund's private placement memorandum and operating agreement expressly provided that the fee would be warranted and payable to Obsidian Management only in the event the Fund reached the anniversary date of its "initial closing." RP 1605, 1638, 1841, 1847-48, 1861, 1892. Grivas testified that the initial closing occurred in April 2012. RP 1605, 1638.

881, 1387-88, 1557, 1975, 1982, 2212, 2280. Grivas also paid other fees and expenses incurred by the Fund, including $560,115 paid to placement agents. RP 1835, 1942, 1969-76, 1975, 1982-87, 2211-12. Payment of these fees and expenses left the Fund's operating account with a balance of $297,094. RP 881, 941-43, 1391, 1956-57, 2211-12.

The initial public offering of Facebook shares occurred on May 18, 2012. RP 881, 1146-47. Because the Fund was no longer able to purchase pre-IPO Facebook shares or accept any additional investors, this event marked the beginning of the end for the Fund's necessary purpose and existence. RP 1146-47, 1371, 1378-79, 1388-91, 1840, 1858, 2137. The Fund's private placement memorandum and operating agreement made clear that the Fund intended to make in-kind distributions of purchased Facebook securities to the Fund's Class A members. RP 1311-21, 1388-91, 1507-10, 1853, 1902. After the conclusion of a six-month lockup period that ended in November 2012, all that remained for the Fund to do was to pay any additional, accrued expenses, distribute purchased Facebook shares to the Fund's Class A members, refund any remaining monies to those investors, and dissolve the Fund—tasks that could be accomplished in two to three weeks.[14] RP 1156-58, 1311-26, 1388-1406, 1410-12, 1417-25, 1476-78, 1507-10, 1568, 1630, 1939-43, 1945-47, 1949-53, 1961-62, 1965-87, 1989-97, 2007-08, 2009-12.

---

[14] The private placement memorandum and operating agreement provided for the distribution of the Fund's un-invested capital, after payment of the Fund's fees and expenses, to the Fund's investors. RP 1841, 1852-53, 1856, 1858-59, 1861-62, 1896-1901, 1905-06. Although the terms of those documents provided that such distributions would be made at the discretion of Obsidian Management, the evidence in this case consistently established that Grivas, Marcus, and the Fund's Class A members understood that any monies not used by the Fund to purchase Facebook stock, and cover the Fund's fees and expenses, would be returned to investors in proportion to their investments in the Fund.

D. Grivas Cures Obsidian Financial's Net Capital Problems with Fund Monies

Obsidian Financial began experiencing regulatory capital problems in early 2012. RP 879. In early June 2012, Grivas learned that Obsidian Financial had a net capital deficiency and was in need of additional capital to continue operating. RP 1230-31, 1654-55. Grivas consequently decided to withdraw money from the Fund's operating account to resolve Obsidian Financial's net capital problems.[15] RP 1230-33, 1626-31, 1639-40, 1654-55. In a series of transactions that Grivas effected personally on June 14, 2012, and June 15, 2012, Grivas withdrew $280,000 from the Fund's operating account and transferred this sum to Obsidian Financial.[16] RP 881, 2214, 2283, 2300, 2316, 2360-61.

E. Grivas Does Not Disclose or Document the $280,000 Withdrawal

Grivas did not consult with anyone to determine if his actions were permitted when he took monies from the Fund to cover Obsidian Financial's regulatory-capital shortfall.[17] RP 1152-53, 1287, 1371, 1627-29, 1636, 1642-43, 1656-57. Nor did he document the withdrawal and transfer in the Fund's records or inform anyone, including any of the Fund's investors, of his

---

[15] On June 15, 2012, Obsidian Financial submitted a notification under the Securities Exchange Act of 1934 ("Exchange Act") and Rule 17a-11(b) thereunder that indicated the firm had a net capital deficiency of $110,000 during the period of May 15, 2012, through June 15, 2012. RP 881-82. The notification also stated that Obsidian Financial received a capital infusion on June 15, 2012, to correct this capital deficiency. RP 881.

[16] Specifically, on June 14, 2012, Grivas transferred $280,000 from the Fund's operating account to Obsidian Management's bank account. RP 881, 2214, 2283. On the same day, Grivas transferred $280,000 from Obsidian Management's bank account to the account of Olympus Capital Holdings, LLC ("Olympus"), a disclosed outside business activity and an entity that Grivas solely owned and used for his personal investment purposes. RP 881, 2283, 2360. Again on June 14, 2012, Grivas transferred $280,000 from the Olympus bank account to the bank account of Obsidian Holdings. RP 881, 2300, 2361. Finally, on June 15, 2012, Grivas transferred $280,000 from Obsidian Holding's bank account to the bank account of Obsidian Financial. RP 881, 2300, 2316.

[17] Indeed, Grivas admitted that he had not yet read the private placement memorandum or operating agreement when he withdrew the funds. RP 1153.

actions. RP 882, 1152-56, 1197-12, 1228-30, 1287, 1290-91, 1304-05, 1391-1417, 1423-28, 1435-43, 1627-29, 1636, 1642-43.

As the Fund's consultant, Marcus prepared calculations and maintained spreadsheets that tracked the investments of the Fund's Class A members, the purchase and allocation of Facebook shares, expenditures and reserves for the Fund's fees and expenses, and the amounts of any refunds due from the Fund's operating account to investors. RP 1132-34, 1156-60, 1189-90, 1196-1212, 1220-25, 1284-90, 1369-71, 1376-87, 1390-1406, 1408-30, 1434-37, 1439-41, 1449-53, 1470, 1476-78, 1541, 1939-43, 1949-53, 1961-62, 1965-76, 1977-87, 1993-98, 2007-08, 2009-12. On June 6, 2012, just days before the $280,000 withdrawal, Marcus calculated and confirmed that the Fund's operating account had a balance of $297,094. RP 1413-17, 1949-53, 1955-59.

In the months following the $280,000 withdrawal, Marcus prepared additional calculations and spreadsheets reflecting the balance that she understood to remain in the Fund's operating account. RP 1939-44, 1949-54, 1965-76, 1977-88, 1993-98, 2009-12. Grivas knew that Marcus maintained these spreadsheets and used that information to communicate with the Fund's Class A members concerning the refund amounts that they could expect when the Fund was dissolved. RP 1132-34, 1156-60, 1189-90, 1196-1212, 1220-25, 1284-90. Although Grivas reviewed these spreadsheets, and discerned that they contained incorrect information, he did not inform Marcus that her figures were wrong and that the balance in the Fund's operating account was in fact $280,000 less than the amount that she calculated.[18] RP 1156-60, 1189-93, 1195-96, 1196-1212, 1220-25, 1284-90, 1390-1406, 1408-30, 1434-37.

---

[18] Grivas did not disclose to Marcus the withdrawal from the Fund's operating account until February 2013, when Marcus was scheduled to provide on-the-record testimony to FINRA staff.
[Footnote continued on next page]

F. Grivas Repays the Fund After FINRA Investigates His Conduct

FINRA began investigating Grivas in June 2012. RP 1161, 1795-97. Over the ensuing months, in a series of requests issued under FINRA Rule 8210, FINRA staff asked that Grivas produce documents and information related to the Fund, including copies of statements for the Fund's bank accounts. RP 1795-97, 1801-07, 1809-11, 1817-19. Grivas produced the bank statements, albeit late, in February 2013.[19] RP 1174-75. After receiving the statements, FINRA staff questioned Grivas, and he admitted that he withdrew $280,000 from the Fund's operating account, but he characterized the withdrawal as an "advance." RP 1176. Over time, Grivas refined his story to portray the withdrawal as consisting, in part, of an interest-free "loan" and, in part, an "advance." RP 1170-71, 1231, 1303-05, 1624-26, 1660-62. On May 9, 2013, two months after he provided on-the-record testimony to FINRA staff, and a week after FINRA staff filed the complaint in this matter, Grivas repaid the Fund by depositing $280,000 into the Fund's operating account.[20] RP 882, 1160, 1233-36, 2056.

Virtually all of the Facebook shares purchased by the Fund were distributed to its Class A members in July 2013. RP 882, 1604-05. In September 2013, Grivas distributed the monies remaining in the Fund's operating account to the Fund's investors. RP 2069-2118. The Fund

---

[Cont'd]

RP 882, 1441-43. In fact, Grivas had not, as of the time of his disciplinary hearing, informed the Fund's investors that he withdrew $280,000 from the Fund's accounts. RP 1160. He testified that he determined it was not "prudent" for him to do so. RP 1154-56.

[19] Obsidian Financial ceased operations on February 22, 2013, and FINRA expelled the firm from membership on October 16, 2013, for failing to file a quarterly financial report. RP 9, 39, 1127.

[20] On May 10, 2013, Grivas withdrew most of this sum—$224,092—from the Fund's operating account and transferred the monies through Obsidian Management to Olympus. RP 1233-36, 2054, 2056, 2132.

existed at the time of the disciplinary hearing in this matter for the limited purpose of distributing Schedule K-1 tax forms to the Fund's Class A members. RP 1247.

IV. ARGUMENT

A. Grivas Converted Monies and Violated the High Standards of Conduct Required Under FINRA Rule 2010

FINRA's action is devoid of any legitimate dispute.[21] FINRA found that Grivas intentionally withdrew $280,000 from the Fund's operating account for the unauthorized purpose of improving Obsidian Financial's anemic regulatory capital position. There can be no doubt that his self-interested act of converting the Fund's monies and cheating its investors to preserve his broker-dealer's ability to conduct business violated FINRA Rule 2010. The Commission should therefore affirm FINRA's action.

FINRA Rule 2010 requires that "[a] member, in the conduct of its business, observe high standards of commercial honor and just and equitable principles of trade." FINRA Rule 2010 applies also to persons associated with a member under FINRA Rule 0140(a), which provides that "[p]ersons associated with a member shall have the same duties and obligations as a member under the Rules." Conversion is conduct that violates FINRA Rule 2010.[22] *Denise M. Olson*, Exchange Act Release No. 75838, 2015 SEC LEIXS 3629, at *7 (Sept. 3, 2015).

---

[21] The Commission must dismiss Grivas's application for review if it finds that he engaged in conduct that violated FINRA rules, FINRA applied its rules in a manner consistent with the Exchange Act, and FINRA imposed sanctions that are neither excessive nor oppressive and do not impose an unnecessary or inappropriate burden on competition. *See* 15 U.S.C. § 78s(e).

[22] Conversion is defined generally in FINRA proceedings as the "'intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it.'" *See, e.g.*, *Keilen Dimone Wiley*, Exchange Act Release No. 76558, 2015 SEC LEXIS 4952, at *15 (Dec. 4, 2015) (quoting *FINRA Sanction Guidelines* 36 & n.2 (2013)).

FINRA established that Grivas's conduct met each element of the definition of conversion and found correctly that his actions constituted a failure to observe high standards of commercial honor in violation of FINRA Rule 2010. *See* RP 2907-08. Grivas admits that he made an unauthorized withdrawal of $280,000 from the Fund's operating account. *See* Br. at 2 n.2 ("Grivas does not question the NAC finding that the funds he took from the Fund . . . was without authority."). He also does not dispute that this misappropriation of the Fund's monies was deliberate or that he caused the funds to be transferred, in a series of undisclosed transactions, to Obsidian Financial for the express purpose of correcting the firm's net capital deficiency. *See* Br. at 4 ("It is undisputed that . . . Grivas . . . instructed that . . . the Fund's money be transferred from the Fund's operating account to the bank account of the Management Co. and that such transfer took place."); *see also* RP 881, 1230-33, 1626-31, 1639-40, 1654-55. His unjust and unprincipled conduct—conversion—unmistakably defied the ethical requisites by which all FINRA members and their associated persons must abide and violated FINRA Rule 2010.[23] *See, e.g.*, *Wiley*, 2015 SEC LEXIS 4952, at *22 ("Wiley intentionally used his

[23] During his disciplinary hearing, Grivas claimed that the $280,000 he caused to be transferred from the Fund to Obsidian Financial comprised, in part, a personal, interest-free loan and, in part, an advance of a second-year management fee to Obsidian Management. In his appellate brief, Grivas abandons these blatantly self-serving, after-the-fact justifications for his unethical conduct. His concession is understandable. The NAC concluded that Grivas's actions were unauthorized. *See* RP 2908-10. As the NAC's decision plainly illustrates, his testimony characterizing the withdrawal of funds as a loan or an advance lacked credibility, there is no evidence in the record to corroborate his claims, and there are no provisions in the Fund's private placement memorandum or operating agreement to support his contention that he was permitted, as the Fund's de facto manager, to engage in acts of self-dealing. *Id.* Given his unambiguous admission that his actions were unauthorized, the Commission should soundly reject any indirect efforts by Grivas to revive through the back door claims that the withdrawal of Fund monies was in this case legitimate. *See, e.g.*, Br. at 6 ("Management Co. can exercise all powers reasonably connected with the Fund's business . . . including the power to make advances/loans from the Fund. . . . The Management Co. did so at bar."). The Commission should not permit Grivas to argue incompatible positions in this appeal.

customers' insurance payments for personal and business expenses . . . . We agree with FINRA that this conduct is inconsistent with just and equitable principles of trade."); *John Edward Mullins*, Exchange Act Release No. 66373, 2012 SEC LEXIS 464, at *42 (Feb. 10, 2012) ("J. Mullins's conversion of the Foundation's property was a violation of [just and equitable principles of trade]."); *Daniel D. Manoff*, 55 S.E.C. 1155, 1161 (2002) ("We conclude that Manoff engaged in the unauthorized use of Fisher's credit card numbers . . . . As a result, Manoff is subject to discipline under [FINRA Rule 2010's predecessor]."); *Ernest A. Cipriani*, 51 S.E.C. 1004, 1006 (1994) (affirming FINRA disciplinary action where the respondent converted and misappropriated cash payments for life insurance premiums in violation of high standards of commercial honor and just and equitable principles of trade); *Mike K. Lulla*, 51 S.E.C. 1036, 1037 (1994) (affirming FINRA findings that a registered representative of a member firm converted funds in the account of a customer at another member firm in violation of FINRA rules).

B. FINRA Had Authority to Discipline Grivas

Unable to contest the merits of FINRA's action, Grivas avers instead that FINRA does not possess jurisdiction to discipline him for his patently unethical misconduct. In doing so, Grivas simply reinterprets FINRA Rule 2010 and whitewashes the past to fit his purpose. He seeks to impose on FINRA jurisdictional limits that do not exist in the rule and slyly cleaves from his recounting of the record any number of the frank realities that surround his wrongdoing. His inventions are devoid of merit, and the Commission should promptly reject them.

The Exchange Act requires FINRA to adopt rules that "promote just and equitable principles of trade . . . and, in general, to protect investors and the public interest . . . ." 15 U.S.C. §78o-3(b)(6); *see generally* 15 U.S.C. §78s (requiring FINRA to promulgate and enforce

rules governing the conduct of its members). FINRA Rule 2010 fulfills this requirement.[24] *See Benjamin Werner*, 44 S.E.C. 622, 624 (1971) ("The NASD's rule requiring the observance of just and equitable principles of trade . . . carr[ies] out and implement[s] the congressional mandate expressly set forth in Section 15A [of the Exchange Act]."). The rule authorizes FINRA to regulate the ethical standards of securities firms and professionals.[25] *Alfred P. Reeves*, Exchange Act Release No. 76376, 2015 SEC LEXIS 4568, at *12 (Nov. 5, 2015). "To this end, Rule 2010 sets forth a standard intended to encompass a wide variety of conduct that may

---

[24] Grivas's attempt to restrict FINRA's disciplinary jurisdiction under the Exchange Act and FINRA Rule 2010 rests largely on decisions that concern the definition of the term "customer" under FINRA's arbitration rules. *See* Br. at 11-13. These cases are entirely inapposite to the issues presented here. *See, e.g., Raymond James Fin. Servs., Inc., v. Cary*, 709 F.3d 382, 383 (4th Cir. 2013) (holding that appellants were not customers of FINRA member firm within the meaning of FINRA's arbitration rules); *Fleet Boston Robertson Stephens, Inc. v. Innovex, Inc.*, 264 F.3d 770, 771 (8th Cir. 2001) ("The essence of this dispute . . . is whether AdFlex was a customer of Robert Stephens under the NASD [Arbitration] Code."). Indeed, no case cited by Grivas, Br. at 11-13, supports the proposition that FINRA's regulatory mandate under the Exchange Act is limited merely to protecting those who receive investment or brokerage services from FINRA members and their associated persons. *See, e.g., Fiero v. FINRA, Inc.*, 660 F.3d 569, 574 (2d Cir. 2011) (finding FINRA lacks authority to bring court actions to collect disciplinary fines it has imposed). FINRA's role and scope of authority is much broader and includes the power to adopt, administer, and enforce rules of fair practice. *See, e.g., UBS Fin. Servs., Inc. v. Carilion Clinic, Inc.*, 706 F.3d 319, 326 (4th Cir. 2013) (citing *UBS Fin. Servs., Inc. v. W. Va. Univ. Hosps., Inc.*, 660 F.3d 643, 652 (2d. Cir. 2011)). The Exchange Act thus provides a comprehensive system of regulation of the securities industry that includes self-regulatory organizations, like FINRA, to which "Congress delegated power . . . to enforce, at their own initiative, compliance by members of the industry with both the legal requirements laid down in the Exchange Act and the ethical standards going beyond those requirements." *Austin Mun. Sec., Inc, v. NASD*, 757 F.2d 676, 679 (5th Cir. 1985) (internal quotation omitted); *accord Heath v. SEC*, 586 F.3d 122, 132 (2d Cir. 2009) ("[I]n accordance with the Exchange Act . . . the NYSE adopted . . . the J&E Rule, which prohibits registered members from engaging in conduct or proceeding inconsistent with just and equitable principles of trade." (internal quotation omitted)).

[25] Grivas selectively parses FINRA's Restated Certificate of Incorporation in support of his narrow jurisdictional arguments. Br. at 12. The objects and purposes of FINRA's business that are stated therein are far more numerous than Grivas suggests. They include as FINRA's purpose the power "[t]o adopt, administer, and enforce rules of fair practice . . . and in general to promote just and equitable principles of trade for the protection of investors." Restated Certificate of Incorporation of FINRA, Article Third, paragraph (3).

operate as an injustice to investors or other participants in the marketplace." *Id.* (internal quotation omitted). FINRA's power to discipline its members and their associated persons under FINRA Rule 2010 is accordingly far-reaching and covers *any* unethical, business-related conduct. *See Vail v. SEC*, 101 F.3d 37, 39 (5th Cir. 1996); *see also Wiley*, 2015 SEC LEXIS 4952, at *11 ("As a registered person and a person associated with a member firm, Wiley's business-related conduct is subject to discipline in accordance with FINRA's rules.").

Deterred by neither the clear contours of the law nor the facts, Grivas contends in his appeal brief that FINRA did not possess jurisdiction to discipline him because his actions were not "closely related to the investment banking or securities business" of Obsidian Financial. *See* Br. at 2, 7, 11-19. He is mistaken. Grivas's interpretation of Rule 2010's jurisdictional reach is entirely inconsistent with long-standing precedent.[26] Misconduct not related directly to the securities industry is subject to discipline under FINRA Rule 2010.[27] *See Leonard John Ialeggio*, 52 S.E.C. 1085, 1089 (1996), *aff'd*, No. 98-70854, 1999 U.S. App. LEXIS 10362, at *4-5 (9th Cir. May 20, 1999). The Commission has thus affirmed repeatedly FINRA disciplinary action taken against firms and individuals for business-related wrongdoing that ostensibly bears no connection to a securities transaction. *See, e.g.*, *Wiley*, 2015 SEC LEXIS

---

[26] The plain language of FINRA Rule 2010 does not include the phrases or words "closely related," "investment banking," or "securities." Grivas simply fabricates these terms to reimagine the rule to his liking. The Commission should not permit Grivas to read into the express language of FINRA Rule 2010 jurisdictional restraints that do not otherwise exist therein. *See, e.g.*, *MPhase Techs., Inc.*, Exchange Act Release No. 74187, 2015 SEC LEXIS 398, at *39 (Feb. 2, 2015) (finding that the plain language of a FINRA rule determines the scope of FINRA's authority to act under the circumstances presented); *Ko Sec., Inc.*, 56 S.E.C. 1126, 1131 (2003) (rejecting an interpretation of a FINRA rule where the interpretation was not consistent with the rule's plain language); *Stuart-James Co., Inc.*, 48 S.E.C. 779, 782 (1987) (same).

[27] Contrary to Grivas's contention, Br. at 1, this case does not involve matters of "first impression" concerning the scope of FINRA's jurisdiction under FINRA Rule 2010.

4952, at *11 ("Wiley's unethical, business-related conduct, even while performing insurance-related activities, falls under FINRA's jurisdiction."); *Blair Alexander West*, Exchange Act Release No. 74030, 2015 SEC LEXIS 102, at *25 (Jan. 9 2015) ("We reject West's claim that FINRA lacked jurisdiction to bring this action because [t]he underlying transaction was not a securities transaction." (internal quotation omitted)); *Manoff*, 55 S.E.C. at 1162 (rejecting arguments that FINRA did not possess jurisdiction because respondent's misuse of credit card account numbers was not business-related); *Cipriani*, 51 S.E.C. at 1006 (finding that the respondent converted and misappropriated cash payments for life insurance premiums in violation of FINRA's then existing rules of fair practice); *Lulla*, 51 S.E.C. at 1039 ("The NASD has an interest in regulating conduct of its members or associated persons that threatens the integrity of the industry."); *Thomas E. Jackson*, 45 S.E.C. 771, 772 (1975) ("Although Jackson's wrongdoing in this instance did not involve securities, the NASD could justifiably conclude that on another occasion it might."). FINRA Rule 2010 is accordingly applied correctly when, as is the case here, wrongdoing reflects on the capacity of a member or an associated person "to comply with regulatory requirements fundamental to the securities business and to fulfill [their] fiduciary responsibilities in handling other people's money." *Manoff*, 55 S.E.C. at 1162 (citing *James A. Goetz*, 53 S.E.C. 472, 477 (1998)).

Within the framework of the well-settled law, and given the uncontroverted proof of his misconduct, there can be no genuine debate that FINRA properly disciplined Grivas in this matter. Although Grivas demurely protests that the facts of this case relate "solely to the alleged 'conversion of funds' from the Fund's Operating Account" by the Fund's manager, and bears "absolutely no relation to any business, securities or non-securities, of the member with whom

Grivas is registered, or [his] activities as an associated person," Br. at 18, a broader view of the evidence establishes much more.

When confronted with an obvious conflict of interest, Grivas deliberately chose to benefit Obsidian Financial, the FINRA-member broker-dealer that he owned indirectly and with which he was associated and registered, by cheating the Fund.[28] As the sole manager of Obsidian Management, an express Fund fiduciary, he made an unauthorized withdrawal of monies from the Fund's operating account, and he admittedly used these funds, after resourcefully funneling them through entities he disclosed as outside business activities, to meet the regulatory, net capital requirements of Obsidian Financial.[29]

Grivas's efforts to suppress the record thus prove labored and hollow. The evidence of Grivas's business-related conduct, when considered in its entirety, established decisively his inability to comply with the regulatory requirements of the securities industry and his unfitness to handle other people's money. Grivas's misconduct consequently fell directly within the scope of wrongdoing that is prohibited by FINRA Rule 2010 and presented an appropriate subject of

---

[28] As an associated person of Obsidian Financial, Grivas possessed a duty to act at all times in accordance with the ethical standards inherent in FINRA Rule 2010. *See Daniel Joseph Alderman*, 104 F.3d 285, 288 (9th Cir. 1997) (rejecting arguments that FINRA did not have disciplinary authority because the respondent's actions were allegedly as an officer of a private-non-regulated corporation). He did not, as he contends, Br. at 17-19, shed himself of this duty simply because he also had responsibilities as the Fund's de facto manager. *See id.* ("This duty was his . . . and he didn't lose it simply because he also had (unregulated) responsibilities at Peregrine.").

[29] Moreover, this matter stems from a Regulation D offering of the Fund's securities, an offering in which Obsidian Financial participated and sold to its customers. FINRA need not prove, as Grivas argues, Br. at 5, that any of the Fund's investors were also customers of Obsidian Financial at the time he converted the Fund's monies to establish that his conduct violated FINRA rules. *Cf. Lulla*, 51 S.E.C. at 1039 (finding that improper use of a customer's funds is proscribed by FINRA's rules, "without any express limitation on whether the customer is the customer of the associated person at the time of the improper use").

FINRA's regulatory action.[30] *See, e.g.*, *Wiley*, 2015 SEC LEXIS 4952, at *13 ("As an associated person of a FINRA member firm, Wiley was subject to FINRA's prohibition on converting customer premium payments for his own use."); *West*, 2015 SEC LEXIS 102, at *26 ("Although his deliberate misuse of this customer's funds did not involve securities, we find that such wrongdoing reflects negatively both on his ability to comply with regulatory requirements and ability to fulfill his responsibilities in handling customer funds."); *Mullins*, 2012 SEC LEXIS 464, at *42 ("We find that his conversion was also a clear breach of the fiduciary duty that he . . . owed to the Foundation, and that this breach constitutes another violation of [FINRA Rule

---

[30] In his appellate brief, Grivas contends that the singular fact establishing FINRA's jurisdiction in *Vail v. SEC* was the respondent's false representation that the club's funds had been deposited in an account at his member firm. Br. at 17. He is incorrect.

Vail argued that his conduct was not securities related and thus outside the jurisdiction of FINRA's disciplinary authority. *Vail*, 101 F.3d at 39. In response to this argument, the court in *Vail* concluded that his misrepresentation concerning the existence of a securities account caused his misconduct, converting the club's funds, to be securities related and thus clearly within FINRA's regulatory jurisdiction. *See Vail*, 101 F.3d at 39 ("Because Vail made misrepresentations regarding the existence of an account at Cigna, we find that Vail's misconduct was securities related . . . ."). This finding, however, reflects just one aspect of the court's decision in *Vail*. The court found also that, independent of Vail's misrepresentation, his fiduciary position as the club's treasurer constituted business-related conduct that fell squarely within FINRA's jurisdiction. *See id.* ("In addition, the SEC has consistently held that the NASD's disciplinary authority is broad enough to encompass business-related conduct . . . .").

Under either of the separate holdings in *Vail*, FINRA's jurisdiction to discipline Grivas is apparent. There is no doubt that his tangible acts—stealing monies from the Fund and transferring them to his FINRA-member broker-dealer for the purpose of meeting the firm's regulatory capital requirements—can be no more remote from the securities business than the ephemeral falsehood the court found to provide FINRA jurisdiction in *Vail*. *See, e.g.*, *West*, 2015 SEC LEXIS 102, at *26 ("West's misconduct here occurred in connection with his firm's business dealings with AmeriChip."); *DWS Sec. Corp*, 51 S.E.C. 814, 822 (1993) ("Rangel and Liddle's roles at the broker-dealer and the issuers were inextricably intertwined."). His conversion of the Fund's money while acting in his role as its de facto manager also provides firm ground for the exercise of FINRA's jurisdiction in this case. *See Vail*, 101 F.3d at 39 ("We find that Vail's position as a fiduciary of the club managing the club's funds constituted business-related conduct and that, therefore, under [Commission precedent], the SEC correctly found that Vail's conduct fell within the prohibition of [a FINRA Rule 2010 predecessor].").

2010's predecessor]."); *Manoff*, 55 S.E.C. at 1163 ("We conclude that Manoff's unauthorized use of Fisher's credit card numbers constituted unethical business-related conduct, and calls into question his ability to fulfill his fiduciary duties in handling other people's money."); *James A. Goetz*, 53 S.E.C. 472, 478 (1998) ("Goetz's misconduct here . . . reflects directly on Goetz's ability both to comply with regulatory requirements fundamental to the securities business and to fulfill his fiduciary responsibilities in handling other people's money."); *Ialeggio*, 52 S.E.C. at 1089 ("Ialeggio's actions cast doubt on his commitment to the fiduciary standards demanded of registered persons in the securities industry and thus properly are the subject of NASD disciplinary action."). Grivas's attempt to compartmentalize his conversion as a non-securities activity fails. The Commission should uphold FINRA's finding that his dishonest and unethical conduct violated FINRA Rule 2010.

C. Grivas Had Fair Notice of FINRA's Claims

Grivas maintains also that the NAC unfairly found him liable for converting the Fund's assets, a charge he asserts was not included in the disciplinary complaint FINRA staff filed to initiate this matter. Br. at 2, 8. From his insular perspective, the complaint alleged instead that Grivas converted monies belonging to the Fund's investors. Br. at 8. As the NAC concluded correctly, the distinction drawn from Grivas's parsing of the complaint is one without a difference for the purposes of these proceedings. *See* RP 2902 n.3.

"[T]he standard [the Commission uses] for determining whether pleadings in [FINRA proceedings] are sufficient is whether 'the respondent understood the issue and was afforded full opportunity to justify its conduct during the course of the litigation.'" *See Mission Sec. Corp.*, Exchange Act Release No. 63453, 2010 SEC LEXIS 4053, at *30-31 (Dec. 7, 2010) (quoting *Aloha Airlines, Inc. v. Civil Aeronautics Bd.*, 598 F.2d 250, 262 (D.C. Cir. 1979) (internal

quotations omitted)). Notice is thus sufficient in a FINRA disciplinary proceeding when the respondent "is reasonably apprised of the issues in controversy and is not misled." *John M.E. Saad*, Exchange Act Release No. 62178, 2010 SEC LEXIS 1761, at *16 (May 26, 2010) (internal quotation omitted)), *remanded on other grounds*, 718 F.3d 904 (D.C. Cir. 2013). FINRA squarely met these standards here.

The express language of FINRA's complaint leaves no room for argument concerning the specific cause of action that FINRA alleged. The first sentence of the complaint stated, in pertinent part, that "Grivas converted approximately $280,000 of investor funds *raised through a fund that he formed to purchase Facebook, Inc. stock, Obsidian Social Networking Fund I.*" RP 8 (emphasis added). The gravamen of FINRA's disciplinary claims was therefore apparent to Grivas from the outset—Grivas violated FINRA Rule 2010 when he stole Fund monies (monies that had been invested and pooled in the Fund by its stakeholders) and used those monies for an unauthorized purpose, namely to save his struggling broker-dealer. FINRA provided Grivas with fair notice of its allegations and properly found that he violated FINRA rules as alleged in its complaint.[31] *See Lehl v. SEC*, 90 F.3d 1483, 1486-87 (10th Cir. 1996) (rejecting arguments that the SEC found the respondent liable for charging excessive and unfair prices when the complaint against him alleged he failed to disclose that the prices were excessive and unfair). Grivas, who benefited from his counsel's representation throughout these proceedings, had ample opportunity to defend himself against FINRA's core factual allegations and has effectively admitted them

[31] FINRA's action is thus not, as Grivas argues, Br. at 8, based on a modified theory of liability not alleged in the complaint.

all.[32] *See Saad*, 2010 SEC LEXIS 1761, at *16-17 ("Saad, who was represented by counsel since at least the time FINRA issued its complaint, had a full opportunity to defend himself against these factual allegations, which he admitted.").

D. Barring Grivas Is Remedial and Serves the Public Interest

FINRA barred Grivas from associating with any member in any capacity for his conversion of Fund monies. RP 2911-13. A bar advances the well-reasoned principle that conversion is conduct that is so profoundly incompatible with the high standards of conduct that FINRA promotes that it will not, absent extraordinary circumstances, be endured with the prospect for continued employment in the securities industry. Grivas does not address the issue of sanctions in his brief, and there exists in this case no fact or argument that serves to undermine the propriety of FINRA's action or mitigate the bar FINRA imposed for his misconduct. The

---

[32] In a transparent effort to muddy the water and redirect the Commission's attention from the issues at hand, Grivas contends that FINRA charged him with converting investor funds, an offense he claims he could not commit under what he claims is the "specific lawful" or "common law" definition of conversion. Br. at 3-4, 8-9. These arguments prove meaningless. Disciplinary proceedings under FINRA Rule 2010 are "ethical proceedings" and may arise "where no legally cognizable wrong occurred." *Timothy L. Burkes*, 51 S.E.C. 356, 359 (1993), *aff'd*, 29 F.3d 630 (9th Cir. 1994). The Commission has thus routinely accepted FINRA's broad definition of conversion. *See supra* n.22; *see also Mullins*, 2012 SEC LEXIS 464, at *33 (quoting *FINRA Sanction Guidelines* 38 (2007)). Whether Grivas views his conversion as that of Fund monies or investor funds is inconsequential. FINRA established each element of the definition of conversion and found correctly that Grivas violated FINRA Rule 2010; he intentionally stole monies belonging to the Fund and cheated its investors to serve his own unauthorized purpose. Although Grivas attempts to incorporate elements of conversion recognized in other forums, these standards have no bearing on the issues presented here. *See Dep't of Enforcement v. Mullins*, Complaint Nos. 20070094345, 20070111775, 2011 FINRA Discip. LEXIS 61, at *28-29 (FINRA NAC Feb. 24, 2011) (collecting cases), *aff'd*, 2012 SEC LEXIS 464; *see also William F. Rembert*, 51 S.E.C. 825, 826 (1993) ("Although Rembert implies that criminal or civil charges must result before the NASD may discipline him . . . the Exchange Act empowers self-regulatory organizations, such as the NASD, to discipline their members for unethical behavior, as well as violations of the law."); *Benjamin Werner*, 44 S.E.C. at 623-24 (rejecting arguments that, absent a finding of illegal or unlawful conduct, FINRA may not enforce just and equitable principles of trade).

Commission should embrace a bar and affirm the sanction as an appropriate remedy for Grivas's manifestly dishonest behavior.

Conversion is extremely serious misconduct and is one of the gravest violations that a securities industry professional can commit. *Mullins*, 2012 SEC LEXIS 464, at *73. At its core, misappropriating or converting funds or assets is plainly "antithetical to the basic requirement that customers and firms must be able to trust securities professionals with their money." *Wiley*, 2015 SEC LEXIS 4952, at *27. The Guidelines for conversion are accordingly expressed in decidedly uncompromising terms: a bar is the standard sanction.[33] "This approach reflects the judgment that, absent mitigating factors, conversion poses so substantial a risk to investors and/or the markets as to render the violator unfit for employment in the securities industry." *Wiley*, 2015 SEC LEXIS 4952, at *27 (internal quotation omitted). The Commission has accordingly affirmed regularly the necessity of barring individuals who, like Grivas, have engaged in the conversion, theft, or misappropriation of funds or assets belonging to others.[34]

---

[33] The Guidelines for conversion instruct adjudicators to "[b]ar the respondent regardless of [the] amount converted." *FINRA Sanction Guidelines* (2013), at 36 (Conversion or Improper Use of Funds or Securities) (hereinafter "*Guidelines*") (Relevant Portions Attached as Tab A). Because a bar is standard, the Guidelines do not recommend a fine for conversion violations. *Id.*

[34] Commission precedent in this regard is plentiful. *See, e.g.*, *id.* at *29 ("We agree with FINRA that Wiley's conversion of customer insurance premiums reveals a troubling disregard for one of the fundamental responsibilities of securities professionals—handling customer funds."); *West*, 2015 SEC LEXIS 102, at *33-34 ("Misappropriation or misuse of customer funds constitutes a serious violation of the securities laws, involving a betrayal of the most basic and fundamental trust owed to a customer."); *Mullins*, 2012 SEC LEXIS 464, at *80 ("We support the NAC's conclusion that J. Mullins's misconduct reveals a troubling disregard for fundamental principles of the securities industry and that a bar is necessary . . . ." (internal quotations omitted)); *Henry E. Vail*, 52 S.E.C. 339, 342 (1995) ("His actions make us doubt his commitment to the high fiduciary standards demanded by the securities industry. Under these circumstances, we agree with the NASD that his continued presence in the industry threatens the public interest."), *aff'd*, 101 F.3d 37.

FINRA's decision to bar Grivas is supported by several troubling, aggravating factors that establish the fundamentally deceptive and self-interested character of his misconduct. First, his unauthorized actions—withdrawing monies from the Fund's operating account and transferring those monies to Obsidian Financial—were deliberate and intentional.[35] *See Guidelines*, at 7 (Principal Considerations in Determining Sanctions, No. 13); *see also, e.g.*, *Olson*, 2015 SEC LEXIS 3629, at *11 ("Olson admits that her conduct was intentional and that this factor is considered aggravating . . . ."). Second, his misconduct was accompanied by unmistakable efforts to conceal his actions and deceive Fund investors. *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 10); *see also, e.g.*, *Olson*, 2015 SEC LEXIS 3629, at *13 ("[B]ecause Olson concealed her misconduct from the Firm for over a month, we find her deception to be a significant factor supporting a bar."). Third, Grivas has not acknowledged his misconduct, and the testimony he gave to FINRA provides no comfort that he will not, if given the opportunity to continue in the securities industry, engage in similar misconduct in the future. *See Guidelines*, at 6 (Principal Considerations in Determining Sanctions, No. 2); *see also, e.g.*, *Manoff*, 55 S.E.C. at 1165 ("Manoff has not shown any remorse or admitted wrongdoing, and has not provided assurances against a recurrence."). Finally, his obvious self-dealing put the Fund's monies at risk when he placed them in a financially-struggling broker-dealer, while providing a tangible benefit to him by enabling, at least

---

[35] The deception shown by Grivas's failure to disclose or account for his taking of Fund monies, and the secretive manner by which he funneled the monies through several entities that he controlled, leads to only one conclusion—Grivas engaged in an intentional and unauthorized taking of Fund assets for his own use. *See West*, 2015 SEC LEXIS 102, at *33 ("West's concealment of his actions from his customer and his deceit further demonstrate deliberate intent and bad faith.").

momentarily, Obsidian Financial's continued operations.[36] *See Guidelines*, at 6-7 (Principal Considerations in Determining Sanctions, Nos. 11, 17); *see also, e.g.*, *Reeves*, 2015 SEC LEXIS 4568, at *17 ("Reeves deprived HWJ of the use of its [funds] while benefitting himself.").

Grivas's single act of conversion was one too many. *See Olson*, 2015 SEC LEXIS 3629, at * 20 ("We agree with the [FINRA] Board that [t]he Guideline for conversion . . . obviously indicates that a single instance of theft provides ample justification to bar an individual from the securities industry . . . ." (internal quotations omitted)). Although Grivas ultimately returned the monies he converted from the Fund, the fact that this reimbursement was delayed by nearly a year, and prompted by FINRA's regulatory interest and disciplinary allegations, eliminates any potential mitigation his reimbursement has on the sanction FINRA imposed on him. *See Wiley*, 2015 SEC LEXIS 4952, at *28 ("That Wiley eventually remitted the premium amounts to Farmers Insurance has little if any mitigating effect because he did so only after Farmers began an investigation."). The evidence shows that Grivas would likely never have spoken of his deceit, and his repayment of the converted funds would probably not have occurred, absent FINRA's complaint in this matter. *See, e.g.*, Olson, 2015 SEC LEXIS 3629, at *28 ("[W]e have no reason to believe that Olson would have reimbursed Wells Fargo had it not detected her misconduct.").

The facts and circumstances of Grivas's self-interest and deception lead to the unavoidable conclusion that barring him serves a remedial interest and protects the investing

---

[36] Grivas contends that there is no evidence that any Fund investors sustained any loss as a result of his conversion. Br. at 5. This after-the-fact rationalization fails to recognize that Grivas's self-dealing clearly harmed the Fund and its investors. *See, e.g.*, *West*, 2015 SEC LEXIS 102, at *45 ("West's misconduct harmed his customer. By spending the Deposit without authorization, West put his customer's funds at risk for over four months."). Indeed, Obsidian Financial was unable to repay the monies that Grivas stole from the Fund. The funds that Grivas used to repay the Fund instead came from the sale of real estate that Grivas owned. RP 1272-73.

public.[37] *See, e.g.*, *Wiley*, 2015 SEC LEXIS 4952, at *28 ("A bar is necessary to protect the investing public from this type of abuse of trust and confidence . . ."); *Manoff*, 55 S.E.C. at 1166 ("We agree with the NASD that Manoff's continued presence in the securities industry threatens the public interest."). Consequently, the Commission should readily affirm as appropriately remedial the bar FINRA's action imposed in this case.

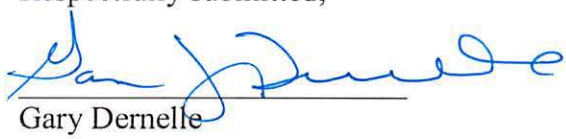
V. CONCLUSION

The blatantly unethical and dishonest nature of Grivas's misconduct is not in dispute. He converted monies belonging to the Fund and its investors for self-interested reasons. In doing so, he clearly violated FINRA Rule 2010. For this misconduct, FINRA rightly barred Grivas. A bar is consistent with the Guidelines for conversion. It is justified under the facts of this case, serves a remedial purpose, and will deter others who, like Grivas, would exploit positions of trust and confidence for their own business purposes. Grivas offers no evidence or arguments that serve to undermine the propriety of FINRA's action or the sanction it imposed. His conversion of Fund assets, the offense with which he was expressly charged, is wrongdoing that falls squarely within FINRA's disciplinary jurisdiction. The Commission should therefore affirm FINRA's action and reaffirm the well-reasoned principle that the conversion or misappropriation of another's funds or assets is conduct that is so profoundly incompatible with the high standards of ethics and honesty demanded of securities industry professionals that it will be met, in all but the most unique cases, with the standard sanction of a bar.

---

[37] "The purpose of expulsion or suspension from trading is to protect investors, not to penalize brokers." *McCarthy v. SEC*, 406 F.3d 179, 188 (2d Cir. 2005). A bar also serves to deter others who may be inclined to steal from firms and investors. *See id.* at 189 ("Although general deterrence is not, by itself, sufficient justification for expulsion or suspension, we recognize that it may be considered as part of the overall remedial inquiry.").

Respectfully submitted,



Gary Dernelle
Associate General Counsel
Office of General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202) 728-8255

December 24, 2015

CERTIFICATE OF SERVICE

I, Gary J. Dernelle, certify that on this 24th day of December 2015, I caused the original and three copies of FINRA's Brief in Opposition to Stephen Grivas's Application for Review, Administrative Proceeding No. 3-16756, to be served by messenger on:

Brent J. Fields, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

and via FedEx overnight and certified mail on:

Martin P. Unger
Wexler Burkhart Hirschberg & Unger, LLP
377 Oak Street
Concourse Level – C2
Garden City, New York 11530

Service was made on the Commission by messenger and the Applicant's counsel by FedEx overnight and certified mail due to the distance between the offices of FINRA and Applicant's counsel.

Respectfully submitted,

Gary J. Dernelle
Associate General Counsel
FINRA
1735 K Street, NW
Washington, DC 20006
(202)728-8255

ATTACHMENT A

FINRA

Financial Industry Regulatory Authority

Sanction Guidelines

Table of Contents

Overview	1
General Principles Applicable to All Sanction Determinations	2
Principal Considerations in Determining Sanctions	6
Applicability	8
Technical Matters	9
I. Activity Away From Associated Person's Member Firm	12
II. Arbitration	17
III. Distributions of Securities	19
IV. Financial and Operational Practices	25
V. Impeding Regulatory Investigations	31
VI. Improper Use of Funds/Forgery	35
VII. Qualification and Membership	38
VIII. Quality of Markets	46
IX. Reporting/Provision of Information	67
X. Sales Practices	76
XI. Supervision	99
Schedule A to the FINRA Sanction Guidelines	106
Index	107

© 2013. FINRA. All rights reserved. July 2013 version of the *Sanction Guidelines*.

Principal Considerations in Determining Sanctions

The following list of factors should be considered in conjunction with the imposition of sanctions with respect to all violations. Individual guidelines may list additional violation-specific factors.

Although many of the general and violation-specific considerations, when they apply in the case at hand, have the potential to be either aggravating or mitigating, some considerations have the potential to be only aggravating or only mitigating. For instance, the presence of certain factors may be aggravating, but their absence does not draw an inference of mitigation.[1] The relevancy and characterization of a factor depends on the facts and circumstances of a case and the type of violation. This list is illustrative, not exhaustive; as appropriate, Adjudicators should consider case-specific factors in addition to those listed here and in the individual guidelines.

1. The respondent's relevant disciplinary history (see General Principle No. 2).
2. Whether an individual or member firm respondent accepted responsibility for and acknowledged the misconduct to his or her employer (in the case of an individual) or a regulator prior to detection and intervention by the firm (in the case of an individual) or a regulator.
3. Whether an individual or member firm respondent voluntarily employed subsequent corrective measures, prior to detection or intervention by the firm (in the case of an individual) or by a regulator, to revise general and/or specific procedures to avoid recurrence of misconduct.
4. Whether the respondent voluntarily and reasonably attempted, prior to detection and intervention, to pay restitution or otherwise remedy the misconduct.
5. Whether, at the time of the violation, the respondent member firm had developed reasonable supervisory, operational and/or technical procedures or controls that were properly implemented.
6. Whether, at the time of the violation, the respondent member firm had developed adequate training and educational initiatives.
7. Whether the respondent demonstrated reasonable reliance on competent legal or accounting advice.
8. Whether the respondent engaged in numerous acts and/or a pattern of misconduct.
9. Whether the respondent engaged in the misconduct over an extended period of time.
10. Whether the respondent attempted to conceal his or her misconduct or to lull into inactivity, mislead, deceive or intimidate a customer, regulatory authorities or, in the case of an individual respondent, the member firm with which he or she is/was associated.
11. With respect to other parties, including the investing public, the member firm with which an individual respondent is associated, and/or other market participants, (a) whether the respondent's misconduct resulted directly or indirectly in injury to such other parties, and (b) the nature and extent of the injury.

---

1 *See, e.g., Rooms v. SEC*, 444 F.3d 1208, 1214-15 (10th Cir. 2006) (explaining that while the existence of a disciplinary history is an aggravating factor when determining the appropriate sanction, its absence is not mitigating).

12. Whether the respondent provided substantial assistance to FINRA in its examination and/or investigation of the underlying misconduct, or whether the respondent attempted to delay FINRA's investigation, to conceal information from FINRA, or to provide inaccurate or misleading testimony or documentary information to FINRA.

13. Whether the respondent's misconduct was the result of an intentional act, recklessness or negligence.

14. Whether the member firm with which an individual respondent is/was associated disciplined the respondent for the same misconduct at issue prior to regulatory detection. Adjudicators may also consider whether another regulator sanctioned a respondent for the same misconduct at issue and whether that sanction provided substantial remediation.

15. Whether the respondent engaged in the misconduct at issue notwithstanding prior warnings from FINRA, another regulator or a supervisor (in the case of an individual respondent) that the conduct violated FINRA rules or applicable securities laws or regulations.

16. Whether the respondent member firm can demonstrate that the misconduct at issue was aberrant or not otherwise reflective of the firm's historical compliance record.

17. Whether the respondent's misconduct resulted in the potential for the respondent's monetary or other gain.

18. The number, size and character of the transactions at issue.

19. The level of sophistication of the injured or affected customer.

Conversion or Improper Use of Funds or Securities

FINRA Rules 2010 and 2150[1], and NASD Rule 2330 and IM-2330

Principal Considerations in Determining Sanctions	Monetary Sanction	Suspension, Bar or Other Sanctions
See Principal Considerations in Introductory Section	***Conversion***[2] (No fine recommended, since a bar is standard.) ***Improper Use*** Fine of $2,500 to $50,000.	***Conversion*** Bar the respondent regardless of amount converted. ***Improper Use*** Consider a bar. Where the improper use resulted from the respondent's misunderstanding of his or her customer's intended use of the funds or securities, or other mitigation exists, consider suspending the respondent in any or all capacities for a period of six months to two years and thereafter until the respondent pays restitution.

1 This guideline also is appropriate for violations of MSRB Rule G-25.

2 Conversion generally is an intentional and unauthorized taking of and/or exercise of ownership over property by one who neither owns the property nor is entitled to possess it.